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8  
9 **BEFORE THE**  
**BOARD FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 905-A

13 **DAVID ALAN JOLLY**  
3890 Vista Campana S, Unit 97  
14 Oceanside, CA 92057

**A C C U S A T I O N**

15 **Land Surveyor License No. L 7672**

16 Respondent.

17  
18 Complainant alleges:

19 **PARTIES**

20 1. David E. Brown (Complainant) brings this Accusation solely in his official capacity  
21 as the Executive Officer of the Board for Professional Engineers and Land Surveyors,  
22 Department of Consumer Affairs.

23 2. On or about July 28, 2000, the Board for Professional Engineers and Land Surveyors  
24 issued Land Surveyor License Number L 7672 to David Alan Jolly (Respondent). The Land  
25 Surveyor License was in full force and effect at all times relevant to the charges brought herein  
26 and will expire on December 31, 2010, unless renewed.

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## JURISDICTION

3. This Accusation is brought before the Board for Professional Engineers and Land Surveyors (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 118, subdivision (b), of the Code provides that the suspension, expiration, surrender or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

5. Code section 8780 states, in pertinent part, that

The Board may receive and investigate complaints against licensed land surveyors and registered civil engineers, and make findings thereon. By majority vote, the Board may reprove, suspend for a period not to exceed two years, or revoke the license or certificate of any licensed land surveyor licensed under this chapter whom it finds to be guilty of:

(a) Any fraud, deceit, or misrepresentation in his or her practice of land surveying.

(b) Any negligence or incompetence in his or her practice of land surveying.

...

(d) Any violation of any provision of this chapter or of any other law relating to or involving the practice of land surveying.

...

(g) A breach or violation of a contract to provide land surveying services.

## REGULATION

6. California Code of Regulations, title 16, section 476(c)(10) provides in pertinent part:

A licensee shall not falsely or maliciously injure or attempt to injure the reputation or business of others.

## COST RECOVERY

7. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of

1 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
2 enforcement of the case.

3 FIRST CAUSE FOR DISCIPLINE

4 (Negligence and Incompetence)

5 8. Respondent is subject to disciplinary action under Code section 8780(b) in that  
6 Respondent was negligent and incompetent in the practice of land surveying when he failed to  
7 adequately research the location of monuments or survey adequately to find additional  
8 monuments on the properties located at 630, 640, and 650 Vermont Avenue in Escondido,  
9 California (Vermont Avenue project), and for failing to understand the basic surveying principles  
10 of establishing a line and in searching for monuments. The circumstances are as follows:

11 a. In September 2004, Charles R., a licensed Professional Engineer, hired Respondent to  
12 perform land surveying services on the Vermont Avenue project. Respondent was to perform the  
13 field survey work and a Boundary Survey for the Vermont Avenue project and then Charles R.  
14 would use the results to prepare the Parcel Map and Record of Survey for the Vermont Avenue  
15 project. Respondent failed to provide a complete survey of the entire block on the Vermont  
16 Avenue project and failed to follow Charles R.'s directions in conducting and analyzing the  
17 boundary, topography, and street cross sections survey. Respondent also wrote letters to Charles  
18 R.'s clients demeaning Charles R.'s qualifications and professional judgment as an engineer.

19 b. Charles R. used Respondent's boundary establishment in his Record of Survey on the  
20 Vermont Avenue project and filed it with the San Diego County Surveyor's Office. Upon review,  
21 the San Diego County Surveyor's office requested additional survey points be found or  
22 established to justify Respondent's boundary establishment for the Vermont Avenue properties.  
23 The County Surveyor's Office found that Respondent showed the monument for Vermont  
24 Avenue over half a foot off the right-of-way line, while PM 17117 showed Vermont Avenue on  
25 the right-of-way line. The County requested that Respondent tie another record monument per  
26 Record of Survey 12591 in order to verify the location of Vermont Avenue. Respondent refused  
27 to perform additional survey work that was required to address the County Surveyor's comments.  
28 Charles R. hired Chris C., another licensed land surveyor. Chris C. resurveyed the property and

1 found the County's comments to be correct; the referenced monument was on the right-of-way  
2 line of Vermont Avenue, not over a half-foot off the right-of-way line as shown on Respondent's  
3 work. Charles R. used Chris C.'s survey to prepare his Parcel Map for the Vermont Avenue  
4 project which was eventually recorded with the monument shown on the right-of-way line.

5 9. Respondent was also negligent in not finding a right-of-way/lot corner monument at  
6 the northerly corner of the intersection of Vermont Avenue and Redwood Street that the  
7 subsequent land surveyor, Chris C. was able to find.

#### 8 SECOND CAUSE FOR DISCIPLINE

9 (Fraud, Deceit or Misrepresentation)

10 10. Respondent is subject to disciplinary action under Code section 8780(a) in that  
11 Respondent committed fraud, deceit or misrepresentation in the practice of professional land  
12 surveying as follows:

13 a. Respondent misrepresented to the Board that he was not hired to perform a Boundary  
14 Survey for the Vermont Avenue project. Respondent represented to the Board that he was only to  
15 perform preliminary research for a possible parcel map; however documentation, including  
16 Respondent's proposal to Charles R., indicates Respondent was hired to perform a boundary  
17 survey.

18 b. After Respondent's refusal to address the County Surveyor's comments regarding the  
19 Vermont Avenue project, Respondent wrote a letter dated September 25, 2003 to Charles R.'s  
20 client Bob P, wherein Respondent misrepresented that he was not hired to perform a Boundary  
21 Survey on the Vermont Avenue project.

#### 22 THIRD CAUSE FOR DISCIPLINE

23 (Breach of Contract)

24 11. Respondent is subject to disciplinary action under Code section 8780(g) in that  
25 Respondent breached his contract to provide professional land surveying services in that he failed  
26 to prepare a Boundary Survey for the Vermont Avenue project as more specifically alleged above  
27 in paragraph 8, and incorporated herein.

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1 FOURTH CAUSE FOR DISCIPLINE

2 (Failed to Comply with Provisions of Land Surveyor's Act)

3 12. Respondent is subject to disciplinary action under Code section 8780(d) in that  
4 Respondent violated provisions of this chapter in conjunction with California Code of  
5 Regulations, title 16, section 476(c)(10) in that he falsely or maliciously injured or attempted to  
6 injure the reputation of another. The circumstances are as follows:

7 a. After Respondent's refusal to address the County Surveyor's comments regarding the  
8 Vermont Avenue project, Respondent wrote a letter dated September 25, 2003 to Bob P., Charles  
9 R.'s client on the Vermont Avenue project, and called into question Charles R.'s competence as a  
10 land surveyor and made damaging statements that questioned Charles R.'s judgment.

11 b. On September 25, 2003, Respondent also wrote a letter to Tony R. of RCE, Inc. and  
12 copied the letter to Homestead Development, Charles R.'s client. In the letter, Respondent states  
13 that he did not certify that the boundary work he performed on the Vermont Avenue property  
14 would be acceptable to the County of San Diego under their scrutiny of a record of survey review  
15 process. However, Respondent's agreement to perform a Boundary Survey obligates him to  
16 accurately establish the property boundaries in question. Respondent's letter implies that Charles  
17 R. erred in the preparation of the Record of Survey that he submitted to the County. This is false  
18 and damaging to Charles R.'s reputation.

19 PRAYER

20 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
21 and that following the hearing, the Board for Professional Engineers and Land Surveyors issue a  
22 decision:

23 1. Revoking or suspending Land Surveyor License Number L 7672, issued to David  
24 Alan Jolly;

25 2. Ordering David Alan Jolly to pay the Board for Professional Engineers and Land  
26 Surveyors the reasonable costs of the investigation and enforcement of this case, pursuant to  
27 Business and Professions Code section 125.3; and

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3. Taking such other and further action as deemed necessary and proper.

DATED: 7/14/10

Original Signed  
DAVID E. BROWN  
Executive Officer  
Board for Professional Engineers and Land Surveyors  
Department of Consumer Affairs  
State of California  
*Complainant*

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